



2011-081

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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July 25, 2011

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Honorable Charles P. Gaines, Attorney
The Public Park Authority of the Cities
of Lincoln and Talladega
Gaines, Gaines & Rasco, P.C.
Post Office Box 275
Talladega, Alabama 35161

**BEFORE RELYING ON THIS OPINION,
SEE THE OPINION ISSUED TO HON-
ORABLE RICKY McELWAIN, CHAIR-
MAN, CRENSHAW COUNTY COMMIS-
SION, DATED FEBRUARY 7, 2013, A.G.
NO. 2013-032.**

Competitive Bid Law – Contracts –
Conflicts of Interest – Municipalities –
Parks and Recreation – Boards of Directors
– Talladega County

Directors of The Public Park Authority of
the Cities of Lincoln and Talladega are
eligible to submit bids or contract for their
services.

Whether such action may be prohibited
pursuant to the State Ethics Law is a
matter that should be submitted to the
Ethics Commission.

Dear Mr. Gaines:

This opinion of the Attorney General is issued in response to your request
on behalf of The Public Park Authority of the Cities of Lincoln and Talladega.

QUESTIONS

Are directors of The Public Park Authority of the
Cities of Lincoln and Talladega, who serve without
compensation, eligible to submit bids or contract for
their services, even if the directors do not participate in
the drafting of the bid specifications, advertising, vot-
ing, or awarding of the winning bid?

If the directors are not eligible to bid because of
their positions, is it permissible for the board members
to resign from their positions to solicit bids?

Would it be a violation of any legislation relating to public contracts, public meetings, Code of Ethics, or any other statutory authority that precludes a director from submitting bids in this situation?

FACTS AND ANALYSIS

In your letter of request, you informed this Office of the following:

The Public Park Authority of the Cities of Lincoln and Talladega ("Park Authority") was incorporated on October 7, 2010, pursuant to [section 11-47-210 through 11-47-239] of the Code of Alabama, as amended. This public corporation needs to retain or contract for the services of an individual or firm to facilitate the management and coordination of the development of the park infrastructure, which presently consists of approximately 2,832 acres of undeveloped real estate. It is anticipated management of the property would require engineering, surveying, architectural, or other professional services. Additionally, the authority intends to solicit bids for cutting or thinning several tracts of timber located upon the property.

The directors are appointed by the Cities of Lincoln and Talladega without compensation. One director is a licensed surveyor who is interested in submitting a bid for providing contract services or becoming the full-time manager for the Park Authority as such an individual is needed. Another director has been employed in the timber industry for over 25 years and wishes to submit a bid for cutting or thinning several tracts of timber. The solicitation of bids for contract services for management of the park or cutting timber would be advertised and open to any interested parties.

As noted in your request, the Park Authority is incorporated pursuant to sections 11-47-210 through 11-47-239 of the Code of Alabama. In your initial question, you seek guidance regarding the ability of members of the board to submit bids or to provide these services, even if the directors do not participate in the drafting of the bid specifications, advertising, voting, or awarding of the winning bid.

Previously, section 41-16-60 of the Code of Alabama has prohibited members and officers of municipal governing bodies, as well as other city and county instrumentalities, from having any financial interest in the purchase of, or contract for, any personal property or contractual service. ALA. CODE § 41-16-60 (2000). This statute stated as follows:

No member or officer of the said state trade schools, state junior colleges, state colleges and universities under the supervision and control of the State Board of Education, the city and county boards of education, the district boards of education of independent school districts, the county commissions and the governing bodies of the municipalities of the state and the governing boards of instrumentalities of counties and municipalities, including waterworks boards, sewer boards, gas boards and other like utility boards and commissions, shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this article.

ALA. CODE § 41-16-60 (2000) (emphasis added).

Recently, however, the Alabama Legislature passed Act 2011-583. This act, which became effective on June 9, 2011, amended section 41-16-60 to state, in pertinent part, as follows:

Members and officers of the city and county boards of education, the district boards of education of independent school districts, may be financially interested in or have any personal beneficial interest, either directly or indirectly in the purchase of or contract for any personal or contractual service under either of the following conditions:

(1) The contract or agreement under which the financial interest arises was created prior to the election or appointment of the individual to the position he or she holds.

(2) The individual holding the position does not participate in, by discussion or by vote, the

decision-making process which creates the financial or personal beneficial interest.

2011 Ala. Acts No. 2011-583, sect. 1.

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000).

Although this statute previously acted as a bar to prevent members and officers of municipal governing bodies, as well as other city and county instrumentalities, from having any financial interest in the purchase of or contract for any personal property or contractual service, such prohibition no longer exists. Instead, this statute now specifically allows various members and officers of city and county boards of education to contract for personal services when either: (1) the contemplated contract was in existence before a person was elected or appointed to a particular position, or (2) the individual does not participate in the deliberation or vote associated with the proposed contract. The amendment, besides deleting any reference to a personal contractual prohibition to certain persons within municipal and county government, also deleted the penalty provision associated with this statute.

You question whether directors of the Park Authority are eligible to submit bids or contract for their services, even if the directors do not participate in the drafting of the bid specifications, advertising, voting, or awarding of the winning bid. Section 41-16-60 only authorizes the actions contemplated in your question to be taken by members of a school board. Nothing, however, in the competitive bid law, or other general provisions of the Code, specifically prohibit a member of a public park authority from submitting a bid or contract on a project in which the board member has a financial interest.

Section 11-47-237 of the Code specifically prohibits members of the board from engaging in actions that would be against the State Ethics Laws. ALA. CODE § 11-47-237 (2008). This Office does not give opinions on the Ethics Law. Therefore, you should submit these questions directly to the Ethics Commission.

CONCLUSION

Directors of The Public Park Authority of the Cities of Lincoln and Talladega are eligible to submit bids or contract for their services.

Honorable Charles P. Gaines
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Whether such action may be prohibited pursuant to the State Ethics Law is a matter that should be submitted to the Ethics Commission.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
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